IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 6433 of 2005

Between:

Jubilee Hills Filling Station, Jubilee Hills, Hyderabad,
Rep. by its Proprietor, Mr. Sunil Kumar.

..... PETITIONER

AND

1 The Chief Rationing Officer-Cum-Licencing Authority, Opp: Anand Theatre, Secunderabad.
2 Bharat Petroleum Corporation Limited, Cherlapapalli Territory, Cherlapalli, R.R. District, Rep. by its Territory Manager.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or order direction, more particularly one in the nature of WRIT OF MANDAMUS declaring the order of the 1st Respondent in Pro.No.C1/55/2005, dt. 22-3-2005 as arbitrary, illegal, capricious and in violation of the requirements of Clause 28 of A P Petroleum Products (Licensing & Regulation of Supplies) Order, 1980, apart from being in violation of Articles 14, 19 (1)(g) and 21 of the Constitution of India and consequentially set aside the same and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.R.PRABHAKAR

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the stage of admission made the following :

ORDER:

Heard both sides and at their request this Writ Petition is taken up for disposal at the stage of admission.

The petitioner challenges the order passed by the first respondent in exercising its jurisdiction under Clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order 1980.

It was stated in the impugned order that during surprise check it was found that one Auto-machine was not working properly and the dealer is using the said Pump for delivery of Petroleum Products to the Customers. Therefore, the dealer was indulging malpractices in MS and HSD and further the stock variations found are beyond permissible limit and the dealer was delivering short weightment and cheating the consumers.

From the material placed before this court, it could be seen that on all earlier occasions, whenever the competent authority conducted a check, no complaints were recorded against the petitioner. This is the first occasion for the respondents to proceed against the petitioners under the above Control Order.

It is further brought to the notice of this court that panchanama was conducted and it was found that some amount of variation in the stock beyond permissible limit was noticed took place and there appears to be some miscalculation. If the calculation of the figures mentioned in the panchanama is correctly made, the variation beyond permissible limit appears to be about 13 litres only. This variation is, no doubt, beyond permissible limit but miniscule in nature. But there appears to

be drastic variation between figures mentioned in the impugned order and the panchanama, copy of which had been supplied to the Writ Petitioner. All these aspects, which are factual in nature, have to be gone into in detail by the competent authority but not by this court in exercise of its jurisdiction under Article 226 of the Constitution of India. The reason is that there is efficacious alternative remedy available to the petitioner by way of making an appeal to the concerned appellate authority as per the Control Order. All these factual aspects would be and could be, more effectively and in detail, gone into by the concerned appellate authority and the appellate authority has also been vested with the power of granting interim orders. Hence, the petitioner is given liberty to approach the appellate authority.

However, since the licence of the petitioner is suspended and by virtue of this, he cannot proceed with the business, I feel it appropriate to suspend the operation of the impugned order till the petitioner prefers an appeal before the concerned authority, preferably within two weeks from the date of receipt of a copy of this order, and obtains appropriate orders.

It is made clear that the petitioner shall make an application seeking appropriate interlocutory order as the one, which has been granted by this court. Pending disposal of such interlocutory application, or the appeal as the case may be, there shall be an interim order suspending the impugned proceedings dated 23.3.2005 of the first respondent.

Accordingly, the Writ Petition is disposed of with the above observation. No costs.

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D.S.R. VARMA, J

DATED: 25.03.2005

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To

1 The Chief Rationing Officer-Cum-Licencing Authority, Opp: Anand Theatre, Secunderabad.
2 Bharat Petroleum Corporation Limited, Cherlapapalli Territory, Cherlapalli, R.R. District, Rep. by its Territory Manager.

3. Two CCs to G.P. for Civil Supplies, High Court of A.P. Hyderabad, (OUT)

4. Two CD copies.